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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,691	11/03/2000	Christofer Fuchs	CM1764Q/VB	3267

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EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/10/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-7

# Office Action Summary

Application No.

09/674,691

Applicant(s)

FUCHS ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Amendment***

1. Amendment A has been filed on January 14, 2003 as Paper No. 6. Claim 1 has been amended. Claim 6 has been cancelled.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-4 and 6-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-4 and 6-14 are rejected because claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future which would impart the desired characteristics. *Ex parte Slob* (PO BdApp) 157 USPQ 172. Claims 1-4 and 6-14 would impart desired characteristics too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition and, in effect, recites compounds by what it is desired that they do rather than what they are. The claims only recite web material that has certain properties when subjected to various tests

performed by the Applicant. While the claims now set forth several broad classes of webs (tissue webs, nonwoven webs, films, and foams), there is still provided no structure in the claims to disclose how these properties are achieved and also no materials that are useful in making these webs.

Claim 1 recites the web may be a "tissue web." This is indefinite because a tissue web can be made from any number of processes. Tissues can be woven and nonwoven, and are generally made any number of ways. Does applicant mean webs made similar to paper? The specification sets forth no detail as to how a tissue web is made.

#### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-4 and 6-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Blanchard (U.S. Patent No. 4,883,481).

Blanchard discloses a garment with size adjustment means for the waistband in the form of a frangible tab that holds a pleat closed, but permits expansion of the pleat when broken (Abstract). The waistband of the diaper is considered to be the web material, and thus, the waistband would have a longitudinal dimension substantially bigger than the transverse dimension. Although Blanchard does not explicitly teach the limitations of Relative Expansion Tension Reduction, Discontinuous Expansion

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Threshold, Discontinuous Expansion Point, elongation at Tearing Point, and Contraction Force because Blanchard did not perform the same tests as Applicant has, it is reasonable to presume that said limitations are inherent to the invention. With regard to Relative Expansion Tension Reduction, increasing the reduction would be a result effective variable induced by using a stronger frangible tab. If the material of Blanchard were not specifically designed to meet the at least 90% reduction in tension, it would have been obvious to a person having ordinary skill in the art to use a sturdier frangible tab with more resistance to breaking, so that when it breaks, there is a greater drop in tension, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Similar modification could be done to adjust the Discontinuous Expansion Threshold. With regard to the Discontinuous Expansion Point, the Examiner would argue that there exists little tension after the fastener breaks but before the web is fully extended. With regard to claims 9-11, the first and second regions have no parameters other than the difference in basis weight. So one could define any first region of the web of Blanchard to be a different basis weight than any second region of the web of Blanchard. With regard to the Contraction Force, the Examiner argues that there would be insufficient Contraction Force in Blanchard, because the waistband is not made of an elastic material. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

***Claim Rejections - 35 USC § 103***

6. Claims 1-4 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lantz (U.S. Patent No. 5,113,981) in view of Danz (U.S. Patent No. 5,672,127).

Lantz discloses a shock absorber that incorporates an elongated strip of flat webbing that is folded longitudinally upon itself in an accordion manner and stitched so that the stitches will tear apart allowing the webbing to be stretched out to its unfolded length when excessive force is applied to the longitudinal axis (Abstract). Lantz describes the webbing as being made of nylon, but does not disclose it to be woven or nonwoven (column 2, line 68). Danz discloses that longitudinal material made of nylon can be either woven or nonwoven, and provide strong, lightweight straps (column 2, lines 32-44). It would have been obvious to one having ordinary skill in the art to use a nonwoven system in the webbing of Lantz, since Danz discloses that both woven and nonwoven materials are both capable of providing strong straps. Although Lantz does not explicitly teach the limitations of Relative Expansion Tension Reduction, Discontinuous Expansion Threshold, Discontinuous Expansion Point, elongation at Tearing Point, and Contraction Force because Lantz did not perform the same tests as Applicant has, it is reasonable to presume that said limitations are inherent to the invention. With regard to Relative Expansion Tension Reduction, increasing the reduction would be a result effective variable induced by using more stitches. If the material of Lantz were not specifically designed to meet the at least 90% reduction in tension, it would have been obvious to a person having ordinary skill in the art to provide more stitches and/or additional Velcro, so that when it breaks, there is a greater

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drop in tension, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Similar modification could be done to adjust the Discontinuous Expansion Threshold. With regard to the Discontinuous Expansion Point, the Examiner would argue that there exists little tension after the fastener breaks but before the web is fully extended. With regard to claims 9-11, the first and second regions have no parameters other than the difference in basis weight. So one could define any first region of the web of Lantz to be a different basis weight than any second region of the web of Lantz. With regard to the Contraction Force, the Examiner argues that there would be insufficient Contraction Force in Lantz, because the webbing is not made of an elastic material, but the accompanying bungee cord is (column 2, lines 6-13).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-4 and 6-14 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant argues that the claims are now definite because the web is further defined. While the web is now limited to the field of tissue webs, nonwovens, films, and foams, there is still no structure to the claims that describe how the claimed properties are achieved. The claims are still essentially results of obscure testing procedures that the Applicants have run on a web material.

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9. Applicant argues that shock-absorbing devices are not analogous to the discontinuously expanding webs of the present invention and therefore, they are not in the field of endeavor. However, these "shock-absorbing devices" are discontinuously expanding webs. Additionally, Applicant's broad claims aren't limited to any particular field of endeavor.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703)



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605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

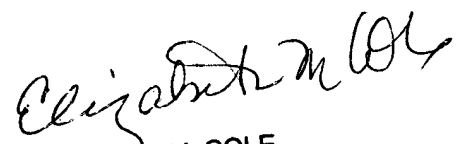
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771

March 5, 2003



ELIZABETH M. COLE  
PRIMARY EXAMINER